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ELECTIONS

SECRETARY OF STATE

Proposed Initiative
2007-2008 #75

REVISED/HIGHLIGHTED

Be it enacted by the People of the State of Colorado:

SECTION 1. Article ~~±~~ 21 of Title ~~±~~ 13 of the Colorado Revised Statutes, is amended ~~by the~~ addition of a new section, ~~18-1-606.1~~: BY THE ADDITION OF A NEW SECTION to read:

~~18-1-606.1~~ 13-21-127. **Civil liability for criminal conduct by businesses.**

(1) ANY INDIVIDUAL RESIDING IN COLORADO MAY FILE A PRIVATE RIGHT OF ACTION AGAINST ANY BUSINESS ENTITY FOR ~~THEIR~~ ITS CONDUCT THAT MEETS THE CRITERIA SET FORTH IN SECTION 18-1-606(1)(a)(1.5), ~~COLORADO REVISED STATUTES,~~ OR ~~ITS~~ AGAINST THE BUSINESS ENTITY'S EXECUTIVE OFFICIALS WHERE SUCH OFFICIALS KNEW OF THE SPECIFIC DUTY TO BE PERFORMED AS REQUIRED BY LAW AND KNEW THAT THE BUSINESS ENTITY FAILED TO PERFORM THAT DUTY.

(2) AS USED IN THIS SECTION:

(a) "BUSINESS ENTITY" MEANS A CORPORATION OR OTHER ENTITY THAT IS SUBJECT TO THE PROVISIONS OF TITLE 7, C.R.S.; FOREIGN CORPORATIONS QUALIFIED TO DO BUSINESS IN THIS STATE PURSUANT TO ARTICLE 115 OF TITLE 7, C.R.S., SPECIFICALLY INCLUDING FEDERALLY CHARTERED OR AUTHORIZED FINANCIAL INSTITUTIONS; A CORPORATION OR OTHER ENTITY THAT IS SUBJECT TO THE PROVISIONS OF TITLE 11, C.R.S.; OR A SOLE PROPRIETORSHIP OR OTHER ASSOCIATION OR GROUP OF INDIVIDUALS DOING BUSINESS IN THE STATE.

(b) "EXECUTIVE OFFICIAL" MEANS ANY NATURAL PERSON WHO IS AN OFFICER, DIRECTOR, MANAGING PARTNER, MANAGING MEMBER, OR SOLE PROPRIETOR OF A BUSINESS ENTITY.

~~(2)~~ (3) IN A CIVIL ACTION BROUGHT UNDER THIS SECTION, COMPENSATORY OR PUNITIVE DAMAGES MAY BE AWARDED TO ANY GOVERNMENTAL ENTITY THAT IMPOSED BY LAW THE SPECIFIC DUTY TO BE PERFORMED BY THE BUSINESS ENTITY.

~~(3)~~ (4) IT SHALL BE A COMPLETE AFFIRMATIVE DEFENSE FOR ANY EXECUTIVE OFFICIAL WHO IS A DEFENDANT IN AN ACTION FILED UNDER SUBSECTION (1) OF THIS SECTION THAT, PRIOR TO FILING OF SUCH CIVIL ACTION OR ANY CRIMINAL CHARGES UNDER SECTION 18-1-606(1)(a), HE OR SHE REPORTED TO THE OFFICE OF THE ATTORNEY GENERAL ALL FACTS OF WHICH HE OR SHE WAS AWARE CONCERNING THE BUSINESS ENTITY'S CONDUCT THAT MET THE CRITERIA SET FORTH IN SECTION 18-1-606(1)(a), ~~COLORADO REVISED STATUTES.~~

(4) (5) SUCH MONEYS, WHEN APPROPRIATED, SHALL BE EXEMPT FROM ALL REVENUE AND SPENDING LIMITATIONS PROVIDED BY LAW.

~~(5)~~ (6) IF AN AWARD IS MADE UNDER THIS SECTION, THE INDIVIDUAL FILING THE LAWSUIT SHALL BE ENTITLED TO REASONABLE ATTORNEY FEES AND COSTS FOR DEFENDING THE INTERESTS OF THE STATE. NO SUCH AWARD SHALL BE MADE FOR CLAIMS THAT LACKED SUBSTANTIAL JUSTIFICATION OR WERE INTERPOSED FOR DELAY OR HARASSMENT.